

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MATTHEW MOREL, an individual on  
his own behalf and on behalf of all others  
similarly situated,  
v.  
HTNB Corporation, a Delaware  
corporation, and DOES 1-50, inclusive,  
Defendant.

Plaintiff,

No.: 22-cv-00408-AJB-AHG

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT**

**(Doc. No. 4)**

Presently pending before the Court is Defendant HNTB Corporation's ("Defendant") motion to dismiss Plaintiff Matthew Morel's Complaint. (Doc. No. 4.) The motion is fully briefed, (Doc. Nos. 8, 9), and the matter is suitable for determination on the papers in accordance with Local Civil Rule 7.1.d.1. Upon consideration of the motions and the parties' arguments in support and opposition, Defendant's motion to dismiss is

**GRANTED WITH LEAVE TO AMEND.**

**I. BACKGROUND**

Plaintiff Matthew Morel brings this class action for alleged failure to reimburse work expenses under California's Labor Code section 2802(a), unfair business practices under California's Business and Professions Code section 17200 *et seq.*, and violation of the

1 Labor Code Private Attorneys General Act of 2004 (“PAGA”). (Compl., Doc. No. 1-2.)  
2 Morel alleges that between January 4, 2021, and July 20, 2021, Defendant employed Morel  
3 as Project Controls Manager for Defendant’s company, which provides engineering  
4 services. (*Id.* ¶ 17.) During this time, Defendant allegedly “was Plaintiff’s ‘employer,’ and  
5 [Morel] was its ‘employee’ as defined by California law.” (*Id.* ¶ 7.)

6 In his first cause of action, Morel alleges Defendant violated California Labor Code  
7 section 2802(a) by failing to reimburse Morel and the putative class after requiring Morel  
8 and the putative class to use their personal cell phones, internet access, and data plans to  
9 perform their work duties. (*Id.* ¶¶ 38–40.) Additionally, Morel alleges Defendant failed to  
10 reimburse Morel and the putative class for expenses and loss related to home office space,  
11 mortgage payments, rent payments, property taxes, homeowner insurance premiums, and  
12 utility expenses. (*Id.* ¶ 41.) As a first derivative claim of Defendant’s alleged section  
13 2802(a) violation, Morel alleges a second cause of action stating Defendant violated  
14 California Business & Professions Code section 17200 et seq. by gaining “an unfair  
15 advantage over law-abiding employers and competitors” by failing to reimburse Morel and  
16 the putative class members. (*Id.* ¶¶ 53–58.) As a second derivative claim of Defendant’s  
17 alleged section 2802(a) violation, Morel asserts a third cause of action under PAGA, which  
18 allows an aggrieved employee to recover civil penalties on behalf of himself or herself and  
19 other current or former employees. (*Id.* ¶ 63.)

20 Morel filed the complaint on February 23, 2022, in the Superior Court of California,  
21 County of San Diego, as Case No. 37-2022-00007029-CU-OE-CTL. (See Doc. No. 1-2.)  
22 Defendant timely removed the case to this Court pursuant to 28 U.S.C. §§ 1332(a), 1441(a),  
23 and 1446. (Doc. No. 4.) On June 9, 2022, Defendant filed the instant motion to dismiss  
24 Morel’s Complaint for failure to state a claim under Federal Rule of Civil Procedure  
25 12(b)(6). (*Id.*) Morel filed a response in opposition, to which Defendant replied. (Doc. Nos.  
26 8 & 9.)

27 **II. LEGAL STANDARD**

28 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the pleadings

1 and allows a court to dismiss a complaint upon a finding that the plaintiff has failed to state  
2 a claim upon which relief may be granted. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.  
3 2001). The court may dismiss a complaint as a matter of law for: “(1) lack of cognizable  
4 legal theory or (2) insufficient facts under a cognizable legal claim.” *SmileCare Dental*  
5 *Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996) (citation omitted).  
6 However, a complaint survives a motion to dismiss if it contains “enough facts to state a  
7 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570  
8 (2007).

9 Notwithstanding this deference, the reviewing court need not accept legal  
10 conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for the  
11 court to assume “the [plaintiff] can prove facts that [he or she] has not alleged.” *Associated*  
12 *Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526  
13 (1983). On the other hand, “[w]hen there are well-pleaded factual allegations, a court  
14 should assume their veracity and then determine whether they plausibly give rise to an  
15 entitlement to relief.” *Iqbal*, 556 U.S. at 679. The court only reviews the contents of the  
16 complaint, accepting all factual allegations as true, and drawing all reasonable inferences  
17 in favor of the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002),  
18 superseded by statute on other grounds, ADA Amendments Act of 2008, Pub. L. No. 110–  
19 325, §§ 4(a), 8, 122 Stat. 3555.

20 **III. DISCUSSION**

21 **A. Claim One: Indemnification**

22 Morel alleges Defendant failed to reimburse necessary work-related expenses for his  
23 and the putative class members’ personal cell phone, internet, and data use. (Compl. ¶ 40.)  
24 Further, Morel alleges Defendant failed to reimburse necessary work-related expenses for  
25 his and the putative class members’ expenditures and losses related to home office space,  
26 mortgage or rent, property taxes, homeowner insurance premiums, and utilities. (*Id.* ¶ 41.)  
27 Defendant asserts in its motion that Morel’s claims are legal conclusions supported by  
28

1 insufficient factual allegations and moves the Court to dismiss Morel’s complaint on that  
2 ground. (Doc. No. 4 at 10–15.) The Court agrees with Defendant.

3 California law requires an employer to indemnify employees for “all necessary  
4 expenditures or losses incurred by the employee in direct consequence of the discharge of  
5 his or her duties.” Cal. Lab. Code § 2802(a). California courts have established that the  
6 elements of an employee’s claim for such indemnity require showing the following:  
7 “(1) the employee made expenditures or incurred losses; (2) the expenditures or losses were  
8 incurred in direct consequence of the employee’s discharge of his or her duties, or  
9 obedience to the directions of the employer; and (3) the expenditures or losses were  
10 necessary.” *Gallano v. Burlington Coat Factory of Cal., LLC*, 67 Cal. App. 5th 953, 960  
11 (2021) (citing *Nicholas Lab’ys, LLC v. Chen*, 199 Cal. App. 4th 1240, 1249 (2011)  
12 (explaining that California has a strong public policy that favors indemnifying employees  
13 against employers for such expenses or losses)). Each element will be discussed in turn.

14 **1. Morel fails to allege sufficient facts showing he or the putative class  
15 members made expenditures or incurred losses**

16 “[A]n indemnification claim may arise under section 2802 when [an] employee has  
17 made a monetary payment (*i.e.*, an expenditure) for a business-related expense *or* incurred  
18 a loss in some other way—such as by becoming ‘liable or subject to’ a charge or obligation  
19 on the employer’s behalf.” *Gallano*, 67 Cal. App. 5th at 962. In California, “[i]f an  
20 employee is required to make work-related calls on a personal cell phone, then he or she is  
21 incurring an expense for purposes of section 2802.” *Cochran v. Schwan’s Home Serv., Inc.*,  
22 228 Cal. App. 4th 1137, 1144 (2014). Accordingly, Morel must plead facts that plausibly  
23 demonstrate he and the putative class members either (1) made payments toward an  
24 internet, phone, data, or utility bill or toward office space, mortgage or rent, property taxes,  
25 or home insurance premiums, or (2) that he and the putative class members have been  
26 charged a certain amount for such expenditures, for which payment is still pending.

27 For example, in *Gallano*, the defendant employed the plaintiff as a retail cashier and  
28 accused the plaintiff of fraud and shoplifting. 67 Cal. App. 5th at 956–57. The defendant

1 then allegedly “directed the plaintiff to sign a promissory note establishing a personal debt  
2 of \$880.” *Id.* at 957. The plaintiff then brought a 2802(a) Labor Code violation claim  
3 claiming that the defendant was passing on to employees “ordinary and predictable  
4 business loses” that occur during retail business. *Id.* at 961. Reasoning that because the  
5 plaintiff assumed a debt of \$880 via the promissory note, the court there held that the  
6 plaintiff had established loss for purposes of a 2802(a) claim. *Id.* at 963. Here, however,  
7 Morel alleges only conclusively that “Defendant required Plaintiff and certain  
8 Class/Subclass Members incur expenses by using their personal cell phones” without  
9 mentioning the costs or charges he or the putative class members incurred in doing so.  
10 (Compl. ¶ 40.) Accordingly, Morel fails to allege facts demonstrating that he is plausibly  
11 entitled to relief.

12 Morel also alleges Defendant failed to reimburse necessary work-related expenses  
13 for his and the putative class members’ expenditures and losses related to home office  
14 space, mortgage or rent, property taxes, homeowner insurance premiums, and utilities. (*Id.*  
15 ¶ 41.) Morel’s allegations as to these expenses fail for similar reasons as stated above. For  
16 example, Morel baldly asserts only that “[t]he factual basis for Plaintiff’s first cause of  
17 action is simple and straightforward, [sic] Defendants did not reimburse plaintiffs for the  
18 required use of their personal property for work related expenses.” (Doc. No. 8 at 3.)  
19 Accordingly, Morel fails to allege sufficient facts showing he or the putative class members  
20 made expenditures or incurred losses.

21 **2. Morel fails to allege sufficient facts showing his or the putative class  
22 members’ expenditures or losses were in direct consequence of the  
23 discharge of his or her duties, or obedience to the employer’s  
24 directions**

25 Section 2802 requires employers to indemnify employees for necessary expenditures  
26 of losses made in direct consequence of the employee’s duties, or obedience to the  
27 employer’s directions. Cal. Lab. Code § 2802(a). Relevant here, the California Second  
28 District Court of Appeal held that an employer must always reimburse an employee for the

1 mandatory use of the employee’s personal cell phone use for work related calls. *Cochran*,  
2 228 Cal. App. 4th at 1140; *see also Herrera v. Zumiez, Inc.*, 953 F.3d 1063, 1078 (9th Cir.  
3 2020) (explaining a mere allegation the employer required an employee to use her personal  
4 cell phone to make work-related calls, without demonstrating what costs were incurred in  
5 doing so, was insufficient for an indemnification claim). Alternatively, Morel provides no  
6 legal authority to support his claim for indemnification for losses related to home office  
7 space, mortgage or rent, property taxes, homeowner insurance premiums, and utilities.

8 This Court’s reasoning in *Brecher v. Citigroup Global Markets, Inc.*, is instructive.  
9 There, the plaintiff alleged the defendant had a policy whereby the plaintiff was “expected”  
10 to supplement the plaintiff’s sales assistant’s wages. *Brecher v. Citigroup Glob. Markets,*  
11 *Inc.*, No. 3:09-CV-1344 AJB (MDD), 2011 WL 3475299, at \*1 (S.D. Cal. Aug. 8, 2011).  
12 The plaintiff alleged the defendant violated section 2802 by failing to reimburse those  
13 supplementary payments. *Id.* at \*8. Reasoning that the plaintiff failed to “elaborate what  
14 the policy was” or “what ‘expected’ means,” the Court held the plaintiff’s complaint “was  
15 insufficient to survive a motion to dismiss.” *Id.* Morel’s complaint is sufficiently analogous  
16 to the deficient complaint found in *Brecher*. For example, Morel only conclusively alleges  
17 that Defendant required him and the putative class members to incur expenses by using  
18 personal cell phones, data plans, and internet access to perform work related duties.  
19 (Compl. ¶ 38.) Morel fails to include any factual allegations as to how Defendant required  
20 Morel and the putative class to use their personal cell phones, data plans, and internet  
21 access to incur expenses, or incur expenses related to home office space, mortgage or rent,  
22 property taxes, homeowner insurance premiums, and utilities. Essentially, like the plaintiff  
23 in *Brecher* failed to explain how his expenses were “expected,” Morel fails to explain how  
24 his expenses relative to personal cell phone and internet use were “required.”

25 **3. Morel fails to allege sufficient facts showing that any alleged  
26 expenditures or losses were necessary**

27 A “necessary” expense is one “incurred by the employee in direct consequence of  
28 the discharge of his or her duties.” Cal. Lab. Code § 2802(a). Moreover, “[a]scertaining

1 whether an expense is ‘necessary’ ‘depends on the reasonableness of the employee’s  
2 choices.’” *Herrera v. Zumiez*, 953 F.3d 1063, 1077 (9th Cir. 2020) (quoting *Gattuso v.*  
3 *Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 567 (2007)). Additionally, the California  
4 Second District Court of Appeal held that “when employees must use their personal cell  
5 phones for work-related calls, Labor Code section 2802 requires the employer to reimburse  
6 them.” *Cochran*, 228 Cal. App. 4th at 1140.

7 Here, Morel alleges Defendant required him and the putative class members to incur  
8 expenses by using their personal cell phones, data plans, and internet access to carry out  
9 their assigned work-related duties such as giving subordinates instructions, communicating  
10 with colleagues for work, and accessing work emails. (Compl. ¶ 38.) Similarly, Morel  
11 alleges Defendant required him and the putative class members to incur expenses related  
12 to home office space, mortgage or rent, property taxes, homeowner’s insurance, and  
13 utilities. (*Id.* ¶ 41.) However, Morel makes no mention of how Defendant required him and  
14 the putative class members to incur expenses by using their personal cell phones, data  
15 plans, and internet access to carry out their assigned work-related duties, or to incur  
16 expenses related to home office space, mortgage or rent, property taxes, homeowner’s  
17 insurance, and utilities.

18 Moreover, Morel makes no allegations that his and the putative class members’  
19 choices were reasonable under the circumstances. *See Herrera*, 953 F.3d at 1078  
20 (“[W]hether Herrera alleged sufficient facts to state a claim for reimbursement of phone  
21 expenses turns on whether it was necessary that the employees make calls and do so with  
22 phones that were not provided by the company.”). Just like the plaintiff in *Herrera*, Morel  
23 fails to allege how using his personal phone, data, and internet was necessary beyond  
24 conclusively alleging that Defendant required him to do so. Specifically, Morel fails to  
25 allege if or how he and the putative class members were required to use phones, data plans,  
26 or internet access that were not provided by the company, or how Defendant required him  
27 or the putative class members to incur expenses related to home office space, mortgage or  
28 rent, property taxes, homeowner’s insurance, and utilities. For example, if Morel could

1 have used company provided phones, data plans, or internet access, then Morel’s choice to  
2 use a personal phone, data plan, or internet access may have been unreasonable. *See id.*

3 Furthermore, Morel has not alleged any facts detailing any of the actual expenses he  
4 or the putative class incurred, nor any attempt by Defendant to reimburse those costs. *See*  
5 *Ellsworth v. Schneider Nat'l Carriers, Inc.*, No. 2:20-cv-01699-SB (SPx), 2020 WL  
6 8773059, at \*9 (C.D. Cal. Dec. 11, 2020) (dismissing plaintiffs’ § 2802 claim because the  
7 “SAC fails to state if [the plaintiffs] ever purchased . . . the shoes . . . or if the [plaintiffs]  
8 asked for reimbursement but were denied”). Thus, the Court finds Morel has not  
9 sufficiently pleaded claims demonstrating he is entitled to indemnification from Defendant.  
10 Therefore, the Court **GRANTS** Defendant’s motion to dismiss Morel’s first claim **WITH**  
11 **LEAVE TO AMEND.**

12 **B. Claim Two: Unfair and Unlawful Business Practices**

13 **1. Merits**

14 Plaintiff’s second cause of action alleges Defendant performed unfair and unlawful  
15 discrimination in violation of California’s Unfair Competition Law (“UCL”). (Compl. ¶¶  
16 47–61.) Under California law, businesses are barred from implementing any unlawful,  
17 unfair, or fraudulent business act or practice. Cal. Bus. & Prof. Code § 17200. Here, Morel  
18 alleges Defendant’s policies and practices of requiring employees to incur the previously  
19 specified expenses without proper reimbursement amount to unlawful business acts. (*Id.* ¶  
20 53.) Defendant counters that because Morel’s claim for unfair competition and unlawful  
21 business practices is based solely on his underlying claim for failure to reimburse work  
22 expenses, which the Court has dismissed, his derivative unfair competition and unlawful  
23 business practices claim should also fail. (Doc. No. 4 at 15.)

24 A plaintiff’s UCL claims will fail when the UCL claims are derived from other failed  
25 claims. *See Tan v. GrubHub, Inc.*, 171 F. Supp. 3d 998, 1011 (N.D. Cal. 2016). Morel’s  
26 claim regarding failure to indemnify has not survived the instant motion to dismiss and as  
27 such, this claim fails.

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## 2. Unfair Competition Law Standing

Defendant additionally contends Morel does not have Article III standing to seek injunctive relief as Defendant’s former employee. Defendant argues Morel’s alleged injury would not be redressed by issuing injunctive relief, and a positive determination that a favorable decision would likely redress the alleged injury is a threshold requirement to establish Article III standing. *See generally Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (internal quotations and citations omitted). However, for purposes of California Unfair Competition Law claims, different standing requirements apply. In November 2004, California voters approved Proposition 64, which changed standing requirements for UCL claims. *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 318 (2011). Namely, this Court stated the following for a plaintiff to have standing under California UCL claims:

[A] plaintiff must (1) “establish a loss or deprivation of money or property sufficient to qualify as injury in fact, *i.e.*, economic injury, and (2) show that the economic injury was the result of, *i.e.*, caused by, the unfair business practice or false advertising that is the gravamen of the claim.”

*Brecher*, 2011 WL 3475299, at \*7 (citing *Kwikset Corp.*, 246 P.3d at 885). Each element will be discussed in turn.

### i. Injury-in-fact

The Supreme Court of California established that for purposes of a UCL claim the alleged injury must be economic. *Kwikset*, 51 Cal. 4th at 323 (“The plain import of [Proposition 64] is that the plaintiff must now demonstrate some form of economic injury.”). Relevant here, the court in *Kwikset* described that while a plaintiff may establish economic injury in “innumerable ways,” one option is by demonstrating he or she was “required to enter into a transaction, costing money or property, that would otherwise have been unnecessary.” *Id.*

For example, the court in *Kwikset* found economic injury where the plaintiff purchased a lockset from the defendant that plaintiff otherwise would not have purchased had the defendant not misrepresented the country in which the lockset was manufactured.

1 *Id.* at 327. The court in *Brecher* similarly found economic injury where the plaintiff lost  
2 unvested stock shares that were to vest over a 7-year period when the plaintiff was  
3 involuntarily terminated from his position within the defendant's company. *Brecher*, 2011  
4 WL 3475299, at \*7. Here, however, Morel has not pleaded any facts showing what the  
5 economic injury is that he alleges he sustained. Beyond conclusory allegations that he and  
6 the putative class were required to incur expenses by using personal phones, data plans,  
7 and internet access to carry out work related duties, in addition to expenses related to home  
8 office space, mortgage or rent, property taxes, homeowner's insurance, and utilities, Morel  
9 alleges no facts as to what those expenses looked like or how they were incurred.  
10 Accordingly, the Court finds the injury-in-fact element unsatisfied.

11 **ii. Caused by the Unfair Business Practice**

12 The second element of standing for purposes of California UCL claims requires that  
13 the injury allegedly suffered "was the result of, *i.e.*, caused by, the unfair business  
14 practice." *Id.* at \*7.

15 For example, the court in *Kwikset* found sufficient causal connection between the  
16 economic injury and the defendant's conduct where the plaintiff would not have purchased  
17 the defendant's lockset had the defendant not misrepresented the country in which the  
18 lockset was manufactured. 51 Cal. 4th at 329. Similarly, the court in *Brecher* found  
19 sufficient causal connection between the economic injury and the defendant's conduct  
20 where the plaintiff's involuntary termination prevented his stock shares from vesting. 2011  
21 WL 3475299, at \*7. Unlike those two cases, Morel has not sufficiently pleaded any facts  
22 indicating a causal connection between his and the putative class's economic injury and  
23 Defendant's conduct. For instance, Morel has not alleged any facts demonstrating how  
24 Defendant required him or the putative class members to incur expenses by using personal  
25 cell phones, data plans, and internet access, or how Defendant required him or the putative  
26 class members to incur expenses related to home office space, mortgage or rent, property  
27 taxes, homeowner's insurance, and utilities. Accordingly, the Court finds this element  
28 unsatisfied.

1       In conclusion, Morel has not satisfied either element to satisfy standing requirements  
2 for purposes of his UCL claim. Thus, Defendant's motion to dismiss Morel's second claim  
3 is **GRANTED WITH LEAVE TO AMEND**.

4       **C.    Claim Three: PAGA Violation**

5       Morel and the putative class additionally seek to recover civil penalties under  
6 PAGA. (Compl. ¶¶ 63–68.) “Under PAGA, an ‘aggrieved employee’ may bring a civil  
7 action personally and on behalf of current or former employees to recover civil penalties  
8 for violation of the California Labor Code.” *Zackaria v. Wal-Mart Stores, Inc.*, 142 F.  
9 Supp. 3d 949, 953 (C.D. Cal. 2015) (citing *Arias v. Sup. Ct.*, 46 Cal. 4th 969, 980 (2009)).  
10 Defendant again contends that since Morel’s PAGA claim is derivative of the first failed  
11 California Labor Code violation claim, Morel’s PAGA claim should also fail. (Doc. No. 4  
12 at 15.)

13       The Court in *Varsam* held that where a plaintiff has sufficiently pleaded her other  
14 causes of action, she also sufficiently pleads her claims under PAGA. *Varsam v. Lab'y Corp. of Am.*, 120 F. Supp. 3d 1173, 1179–80 (S.D. Cal. 2015); *cf. Tan*, 171 F. Supp. 3d at  
15 1011 (“Because these claims are derivative of Plaintiffs’ first five causes of action, some  
16 of which fail to state a claim, so too do the PAGA claims fail to the extent they are premised  
17 on insufficient predicate Labor Code violations.”). Because Morel has insufficiently  
18 pleaded his first cause action, he has also insufficiently pleaded his derivative claim under  
19 PAGA. Thus, Defendant’s motion to dismiss Morel’s third claim is **GRANTED** to the  
20 extent the motion is premised on Plaintiff’s dismissed Labor Code violation claim **WITH**  
21 **LEAVE TO AMEND**.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court **GRANTS** Defendant's motion to dismiss  
3 **WITH LEAVE TO AMEND**. Should Morel choose to do so, where leave is granted, it  
4 must file an amended complaint curing the deficiencies noted herein by **December 5, 2022**.

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6 **IT IS SO ORDERED.**

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8 Dated: November 21, 2022

9   
10 Hon. Anthony J. Battaglia  
United States District Judge

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